

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-7047

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

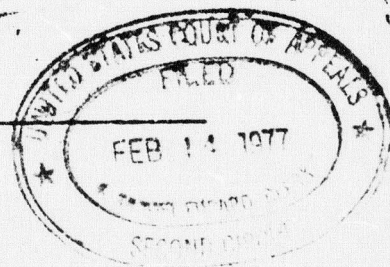
PATRICIA A. FAHEY,
Plaintiff-Appellant,
against

SHIRLEY E. FAHEY and NORMAN CODO
Defendants-Appellees,

On Appeal From The Decision Of
United States District Court For
The Southern District Of New York

BRIEF FOR PLAINTIFF-APPELLANT

Patricia A. Fahey
Plaintiff-Appellant
750 Park Avenue
New York, New York
10021



BRIEF OF APPEAL

Statement On Previous Proceeding

On June 16, 1976, plaintiff-appellant received from the Internal Revenue Service the Federal Estate Tax Return of her late father, Patrick D. Fahey (Form 706) as per her right in accordance with Treasury Regulation and Section 6103 of Title 26, U.S.C..

A review of said Form 706 disclosed that plaintiff-appellant's name was wholly omitted on page - 3 of the "General Information" in said Form 706 as a beneficiary or otherwise in violation of plaintiff's rights. Consequently, on October 18, 1976, plaintiff moved under Rule 60(b)1, R.C.P., Title 28, U.S.C., since, in addition to this and other newly discovered evidence, plaintiff had also inadvertently failed to file in the previous action in the District Court, between September 29, 1975 and November 12, 1975, additional evidence which were not in plaintiff's possession at that time. Based on lack of personal jurisdiction over the defendants, plaintiff's motion under Rule 60(b)1, in order to obtain power of discovery under Rule 34 R.C.P., Title 28, was denied.

Issues Presented For Review

In the year 1964, plaintiff-appellant's father domiciled in Illinois leased an apartment at 27 East 65th Street in New York City for the appellant-daughter to be her permanent home, signing each year the lease, paying the rent, and all other expenses for plaintiff's benefit.

On December 3, 1970, plaintiff's father died. The lease for the apartment for the year 1971, which had already been signed by her father is now one of the issues, and in addition to a \$2,000.00 monthly support for the plaintiff, also provided by her father in his Last Will and Testament, the omission of plaintiff's name as beneficiary in the Federal Estate Tax Return (Form 706) in violation of her rights.

However, although not specifically stated, plaintiff's father's lease of real property in New York provided for the plaintiff, has always been since the beginning of the action, in direct relationship with the complaint, (Prg. 4, pg.2, Pltf.'s Supp. Memo., filed 11-3-75, Distrt. Court), while the defendants argued that the non-domiciliary executors did not have "any contact in New York". (Prg. 1, "The Motion", pg.3, Defs.' Memo. to dismiss, filed 10-28-75, Distrt. Court) and (Prg. 2, "The Facts", pg.1, Defs.' Reply Memo. filed 11-12-75, Distrt. Court).

Preliminary Statement

On February 6, 1971, the defendants were appointed by the Circuit Court of the 12th Judicial Circuit, Will County, Illinois "Executors of the Will" of Patrick D. Fahey. However, under the provisions of this Will, the executors are also trustees. A portion of Section THIRD of the Will (Exb.1, Original Complaint) reads as follows:

THIRD "I give and devise the residue of my estate, excluding any property over which I have power of appointment, to said SHIRLEY E. FAHEY and NORMAN F. CODO as trustees upon the following terms:

A. The trustees shall distribute to any one or more provided, however, that PATRICIA A. FAHEY shall receive no less than \$2,000.00 per month from this trust and from (1) other sources." (App. B(f), pg.7).

The source of the executor's function is twofold: the Law and the Will. Under the Law, the executor must collect the assets of the estate and file the Federal Estate Tax return. The trustee collects the income, pays

1 - The other sources were the principal from which plaintiff claimed her \$2,000.00 per month in her original complaint, in addition to the testamentary trust.

the trust expenses, distributes the income and or the principal in accordance with the direction of the Will. In this case, the two executors are individually and reciprocally also trustees.

The defendants as trustees under Section THIRD of the Will have not given to the plaintiff her monthly support of \$2,000.00 as directed by the Will, as of the time of death of plaintiff's father.

As executors under Section FIFTH of the Will and holders under the Law of plaintiff's father's lease of real property in New York of which property plaintiff was always the occupant, and the lease was to continue or be transferred to the plaintiff and give her the \$2,000.00 per month; the executors at the same time trustees by discontinuing said lease in New York together with the omission of plaintiff's \$2,000.00 per month, caused the plaintiff to be dislodged from her home which caused injuries to the plaintiff and her personal property in New York, which gives grounds to the plaintiff under: Section 302(a)3 ...4, and Section 1391, Title 28, U.S.C. since the allegation of jurisdiction in the Complaint was founded on the existence of a federal question and amount in controversy, and the same real property in New York was always part of the cause of action in relationship.

Further, the executors omitted plaintiff's name as beneficiary from the Federal Form 706 (EV. 9, App., pg. 22) violating plaintiff's right as an heir which right

is included in the Act of April 9, 1866, Chap. XXXI, Thirty-Ninth Congress, Sess. 1, Sec. 1.

ARGUMENT

It was plaintiff-appellant's father's intention that the plaintiff should retain her home in New York, and the \$2,000.00 per month were to be that security. (App.C(a), pg. 9).

A letter dated May 14, 1970, show reference to: "Rent Patricia Fahey" being paid six (6) months in advance in the year 1970 (EV. 1, App., pg.12).

A letter and check dated September 17, 1970, signed by plaintiff's father, show that the rent for 1971 was also paid six (6) months in advance and the lease belonged to him. (EV. 3, App. pg. 14).

The lease for the year 1971 was signed by plaintiff's father (EV. 5, App. pg. 16) subject to a 1% increase annually which the rent Guideline Board refers to as a "stabilizer", pursuant to an (1) agreement signed between plaintiff's father and the Lexington Madison Co. for that year and for future years.

In August 1971, one of the (2) executors signed

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- 1 - Said agreement is part of the original lease.
 - 2 - The executor as spouse of the decedent elected to take under the Will and not the dower as per the Federal Form 706.

the lease for 1972 (EV. 6, App. pgs. 17, 18, 19) and shortly before the expiration of the lease also signed a letter stating that Patrick D. Fahey died in 1970 and the Estate of Patrick D. Fahey will assume no responsibility for payment of said bills. (EV. 7, App. pg. 20).

Other letters with similar text were sent out to other managements when in fact the trustees were directed by the terms of the Will to provide for the beneficiary even to the extent of making direct expenditure. (App. C(b), pg. 9).

Subsequently the plaintiff because of the omissions committed by the defendants was forced to move out from said apartment, provided by her father, and had to place in storage all her furniture, books, and other possessions, which eventually she lost at public auction, since she had no money and could not pay (EV. 8, App. pg. 21) and underwent a state of deprivation and oppression which still continues since plaintiff is a free lance writer, with no steady income and has no benefits nor insurance.

Finally, although not part of this issue, a Trust Agreement signed by the defendants show that the monthly or yearly income from the rent of the property in trust (one industrial plant in Chicago leased up to 1986 to Hewitt-Robbins, Passaic, N. J., a subsidiary of (1) Litton Industries) are excluded from the estate. (App. B(c), pg.7);

1 - Litton Industries has also offices in New York City.

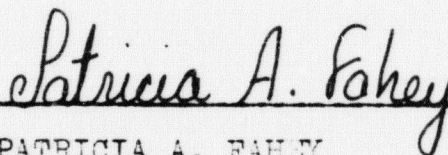
(App. B(d), pg. 7); EV. 11, App. pg. 24).

As further evidence, plaintiff submits a letter dated June 16, 1976 from the Internal Revenue Service supporting the plaintiff as beneficiary. (EV. 10, App. pg. 23).

When we combine the letter of the executor (EV. 7, App., pg. 20) and the lease in possession in New York (EV. 5, App., pg. 16) together with the omission of plaintiff's \$2,000.00 per month and the omission of plaintiff's name in the Federal Form 706, the conclusion is drawn that the intention and the actions of said executors-trustees support plaintiff's grounds for N.Y.C.P.L.R. 302 (a)3..4.

For these reasons, plaintiff respectfully turns to this Court that power of discovery (Access to lands, documents, and things) under Rule 34, Title 23, U.S.C. may be granted to plaintiff for just cause and have the defendants answer why plaintiff's name is not listed in the Federal Form 706.

Respectfully submitted,



PATRICIA A. FAHEY
PRO SE APPELLANT

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New York, New York 10021

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

PATRICIA A. FAHEY,

PLAINTIFF-APPELLANT

-against-

SHIRLEY E. FAHEY,

NORMAN F. CODO,

DEFENDANTS-APPELLEES

DOCKET NUMBER: 77 - 7047

APPELLANT'S BRIEF AND APPENDIX

Plaintiff-Appellant respectfully submits
Appellant's Brief and Appendix.

Patricia A. Fahey

PATRICIA A. FAHEY
PRO SE APPELLANT

750 Park Avenue
New York, New York 10021

DOCKET NO. 77- 7047 YEAR 1977

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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-against-

SHIRLEY E. FAHEY

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PLAINTIFF-APPELLANT'S SUBMISSION OF
BRIEF AND APPENDIX.

ADMISSION OF SERVICE

THE UNDERSIGNED ACKNOWLEDGES
RECEIPT OF A COPY OF THE WITHIN

on February 17, 1977

at 10:45 AM o'clock

ATTORNEY(S) FOR Defendant
Codo

BY: P. Meehan
Copy Meehan
Sup. Appellate